

PATENT COOPERATION TREATY

RECEIVED

From the
INTERNATIONAL PRELIMINARY EXAMINING AUTHORITY

To:

JAMES B. MYERS
WOODARD, EMHARDT, NAUGHTON, MORIARTY
& MCNETT LLP
BANK ONE CENTER/TOWER, SUITE 3700
111 MONUMENT CIRCLE
INDIANAPOLIS, INDIANA 46204

PCT

SEP 22 2003

Woodard, Emhardt, Moriarty,
McNitt & Henry LLPNOTIFICATION OF RECEIPT
OF DEMAND BY COMPETENT INTERNATIONAL
PRELIMINARY EXAMINING AUTHORITY(PCT Rules 59.3(e) and 61.1(b), first sentence
and Administrative Instructions, Section 601(a))Date of mailing
(day/month/year)

17 SEP 2003

Applicant's or agent's file reference

7255-3COLEMA

IMPORTANT NOTIFICATION

International application No.

PCT/US03/00608

International filing date (day/month/year)

09 Jan 2003

Priority date (day/month/year)

09 Jan 2002

Applicant

SUMMERDALE, INC.

1. The applicant is hereby notified that this International Preliminary Examining Authority considers the following date as the date of receipt of the demand for international preliminary examination of the international application:

05 AUGUST 2003

2. That date of receipt is:



the actual date of receipt of the demand by this Authority (Rule 61.1(b)).



the actual date of receipt of the demand on behalf of this Authority (Rule 59.3(e)).



the date on which this Authority has, in response to the invitation to correct defects in the demand (Form PCT/IPEA/404), received the required corrections.

3. ☐ **ATTENTION:** That date of receipt is **AFTER** the expiration of 19 months from the priority date. Consequently, the election(s) made in the demand does (do) not have the effect of postponing the entry into the national phase until 30 months from the priority date (or later in some Offices) (Article 39(1)). Therefore, the acts for entry into the national phase must be performed within 20 months from the priority date (or later in some Offices) (Article 22). For details, see the *PCT Applicant's Guide*, Volume II.



(If applicable) This notification confirms the information given by telephone, facsimile transmission or in person on:

4. Only where paragraph 3 applies, a copy of this notification has been sent to the International Bureau.

Name and mailing address of the IPEA/
Assistant Commissioner for Patent, Box PCT
Washington, D.C. 20231 Attn:RO/US

Facsimile No. 703-305-3230

Form PCT/IPEA/402 (July 1998)

Authorized officer

Marilyn Younger

Telephone No. 703-305-3753

mly

BEST AVAILABLE COPY

PATENT COOPERATION TREATY

From the
INTERNATIONAL PRELIMINARY EXAMINING AUTHORITY

To:
JAMES B. MYERS, JR.
WOODARD, EMHARDT, MORIARTY, MCNETT &
HENRY LLP
BANK ONE CENTER/TOWER, SUITE 3700
111 MONUMENT CIRCLE
INDIANAPOLIS, IN 46204

PCT

NOTIFICATION OF TRANSMITTAL OF INTERNATIONAL PRELIMINARY EXAMINATION REPORT

(PCT Rule 71.1)

Date of Mailing
(day/month/year)

22 OCT 2003

Applicant's or agent's file reference

7255-3COLEMA

IMPORTANT NOTIFICATION

International application No.

PCT/US03/00608

International filing date (day/month/year)

09 January 2003 (09.01.2003)

Priority date (day/month/year)

09 January 2002 (09.01.2002)

Applicant

SUMMERDALE, INC.

1. The applicant is hereby notified that this International Preliminary Examining Authority transmits herewith the international preliminary examination report and its annexes, if any, established on the international application.
2. A copy of the report and its annexes, if any, is being transmitted to the International Bureau for communication to all the elected Offices.
3. Where required by any of the elected Offices, the International Bureau will prepare an English translation of the report (but not of any annexes) and will transmit such translation to those Offices.
4. **REMINDER**

The applicant must enter the national phase before each elected Office by performing certain acts (filing translations and paying national fees) within 30 months from the priority date (or later in some Offices)(Article 39(1))(see also the reminder sent by the International Bureau with Form PCT/IB/301).

Where a translation of the international application must be furnished to an elected Office, that translation must contain a translation of any annexes to the international preliminary examination report. It is the applicant's responsibility to prepare and furnish such translation directly to each elected Office concerned.

For further details on the applicable time limits and requirements of the elected Offices, see Volume II of the PCT Applicant's Guide.

Name and mailing address of the IPEA/US

Mail Stop PCT, Attn: IPEA/US
Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450

Facsimile No. (703)305-3230

Authorized officer

Felicia D. Roberts for
Alton Pryor

Telephone No. 703 308-1235

Form PCT/IPEA/416 (July 1992)

RECEIVED

OCT 27 2003

Woodard, Emhardt, Moriarty,
McNett & Henry LLP

PATENT COOPERATION TREATY

PCT

INTERNATIONAL PRELIMINARY EXAMINATION REPORT

(PCT Article 36 and Rule 70)

Applicant's or agent's file reference 7255-3COLEMA	FOR FURTHER ACTION See Notification of Transmittal of International Preliminary Examination Report (Form PCT/IPEA/416)	
International application No. PCT/US03/00608	International filing date (day/month/year) 09 January 2003 (09.01.2003)	Priority date (day/month/year) 09 January 2002 (09.01.2002)
International Patent Classification (IPC) or national classification and IPC IPC(7): A01N 37/00, 37/08, 37/10, 37/44 and US Cl.: 504/142, 144, 147		
Applicant SUMMERDALE, INC.		
<p>1. This international preliminary examination report has been prepared by this International Preliminary Examining Authority and is transmitted to the applicant according to Article 36.</p> <p>2. This REPORT consists of a total of <u>4</u> sheets, including this cover sheet.</p> <p><input type="checkbox"/> This report is also accompanied by ANNEXES, i.e., sheets of the description, claims and/or drawings which have been amended and are the basis for this report and/or sheets containing rectifications made before this Authority (see Rule 70.16 and Section 607 of the Administrative Instructions under the PCT).</p> <p>These annexes consist of a total of <u>—</u> sheets.</p>		
<p>3. This report contains indications relating to the following items:</p> <p>I <input checked="" type="checkbox"/> Basis of the report</p> <p>II <input type="checkbox"/> Priority</p> <p>III <input type="checkbox"/> Non-establishment of report with regard to novelty, inventive step and industrial applicability</p> <p>IV <input type="checkbox"/> Lack of unity of invention</p> <p>V <input checked="" type="checkbox"/> Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement</p> <p>VI <input type="checkbox"/> Certain documents cited</p> <p>VII <input checked="" type="checkbox"/> Certain defects in the international application</p> <p>VIII <input type="checkbox"/> Certain observations on the international application</p>		
Date of submission of the demand 05 August 2003 (05.08.2003)	Date of completion of this report 07 October 2003 (07.10.2003)	
Name and mailing address of the IPEA/US Mail Stop PCT, Attn: IPEA/US Commissioner for Patents P.O. Box 1450 Alexandria, Virginia 22313-1450 Facsimile No. (703)305-3230	Authorized officer <i>Felicia D. Roberts</i> for Alton Pryor Telephone No. 703 308-1235	

Form PCT/IPEA/409 (cover sheet)(July 1998)

I. Basis of the report

1. With regard to the elements of the international application:*

- ☒ the international application as originally filed.
- ☒ the description:
pages 1-26 as originally filed
pages NONE, filed with the demand
pages NONE, filed with the letter of _____.
- ☒ the claims:
pages 27-31 as originally filed
pages NONE, as amended (together with any statement) under Article 19
pages NONE, filed with the demand
pages NONE, filed with the letter of _____.
- ☐ the drawings:
pages NONE, as originally filed
pages NONE, filed with the demand
pages NONE, filed with the letter of _____.
- ☐ the sequence listing part of the description:
pages NONE, as originally filed
pages NONE, filed with the demand
pages NONE, filed with the letter of _____.

2. With regard to the language, all the elements marked above were available or furnished to this Authority in the language in which the international application was filed, unless otherwise indicated under this item.

These elements were available or furnished to this Authority in the following language _____ which is:

- ☐ the language of a translation furnished for the purposes of international search (under Rule 23.1(b)).
- ☐ the language of publication of the international application (under Rule 48.3(b)).
- ☐ the language of the translation furnished for the purposes of international preliminary examination (under Rules 55.2 and/or 55.3).

3. With regard to any nucleotide and/or amino acid sequence disclosed in the international application, the international preliminary examination was carried out on the basis of the sequence listing:

- ☐ contained in the international application in printed form.
- ☐ filed together with the international application in computer readable form.
- ☐ furnished subsequently to this Authority in written form.
- ☐ furnished subsequently to this Authority in computer readable form.
- ☐ The statement that the subsequently furnished written sequence listing does not go beyond the disclosure in the international application as filed has been furnished.
- ☐ The statement that the information recorded in computer readable form is identical to the written sequence listing has been furnished.

4. ☐ The amendments have resulted in the cancellation of:

- ☐ the description, pages NONE
- ☐ the claims, Nos. NONE
- ☐ the drawings, sheets/fig NONE

5. ☐ This report has been established as if (some of) the amendments had not been made, since they have been considered to go beyond the disclosure as filed, as indicated in the Supplemental Box (Rule 70.2(c)).**

* Replacement sheets which have been furnished to the receiving Office in response to an invitation under Article 14 are referred to in this report as "originally filed" and are not annexed to this report since they do not contain amendments (Rules 70.16 and 70.17).

** Any replacement sheet containing such amendments must be referred to under item 1 and annexed to this report.

V. Reasoned statement under Rule 66.2(a)(ii) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement**1. STATEMENT**

Novelty (N)	Claims <u>6-8,13,14,18,20-32</u>	YES
	Claims <u>1-5,9-12,15-17,19</u>	NO
Inventive Step (IS)	Claims <u>6-8,13,14,18,20-32</u>	YES
	Claims <u>1-5,9-12,15-17,19</u>	NO
Industrial Applicability (IA)	Claims <u>1-32</u>	YES
	Claims <u>NONE</u>	NO

2. CITATIONS AND EXPLANATIONS

Claims 1-5,9-12,15-17,19 lack novelty and an inventive step under PCT Article 33(2)-(3) as being obvious over Farber et al teaches a composition comprising pelargonic acid and serine. See abstract.

Claims 6-8,13,14,18,20-32 meet the criteria set out in PCT Article 33(2)-(3), because the prior art does not teach or fairly suggest the instant inventions comprising the organic acids of claims 6-8,13,14 and carriers of claim 18.

Claims 1-32 meet the criteria set out in PCT Article 33(4), and thus have industrial applicability because the subject matter claimed can be made or used in industry.

VII. Certain defects in the international application

The following defects in the form or contents of the international application have been noted:

Claim 19 is objected to under PCT Rule 66.2(a)(iii) as containing the following defect(s) in the form or contents thereof: In claim 19 line 3 it is unclear as to what is meant by "i.e., as a ready-to-use formulation".

PATENT COOPERATION TREATY

PCT

NOTE OF INFORMAL COMMUNICATION WITH THE APPLICANT

(PCT Rule 66.6)

International application No. PCT/US03/00608	Applicant's or agent's file reference 7255-3COLEMA	Date of informal communication (day/month/year) 02 October 2003 (02.10.2003)
Applicant SUMMERDALE, INC.		

<u>Communication</u> <input checked="" type="checkbox"/> by telephone <input type="checkbox"/> personal	<u>Participants</u> <input checked="" type="checkbox"/> Applicant: SUMMERDALE, INC. <input checked="" type="checkbox"/> Agent: Attorney Myers <input checked="" type="checkbox"/> Examiner(s): Alton Pryor	<input checked="" type="checkbox"/> Identity checked	<input checked="" type="checkbox"/> authorization checked	<input checked="" type="checkbox"/> personally known
---	---	--	---	--

Summary of communication:

On October 2, 2003, Attorney Myers agreed that PCT/IPEA/ Forms 408 and 409 could be processed and mailed at the same time.

☐ An extension of time limit is granted (Form PCT/IPEA/427).

☒ A copy of this note is being sent to the applicant with Form PCT/IPEA/429.

PCT/IPEA/424, 408 & 409

Name and mailing address of the IPEA/US Mail Stop PCT, Attn: IPEA/US Commissioner for Patents P.O. Box 1450 Alexandria, Virginia 22313-1450 Facsimile No. (703)305-3230	Authorized officer <i>Alton Pryor</i> Alton Pryor Telephone No. 703 308-1235
--	---

Form PCT/IPEA/428 (July 1992)